STATE OF MICHIGAN
IN THE SUPREME COURT

Appeal from the Court of Appeals
Sawyer, P.J., M.J. Kelly and Shapiro, JJ.

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff/Appellant,

v.

Supreme Court No. _____
Court of Appeals No. 325802
Livingston County
Circuit Court Case No. 14-022259-AR
53rd District Court Case No.14-1183-FY

RYAN SCOTT FEELEY,

Defendant/Appellee.
_____/

William J. Vailliencourt, Jr. (P39115)
Livingston County Prosecuting Attorney

Brian P. Morley (P58346)
Attorney for Defendant/Appellee
_____/

PLAINTIFF/APPELLANT'S

APPLICATION FOR LEAVE TO APPEAL

William J. Vailliencourt, Jr. (P39115)
Livingston County Prosecuting Attorney
Attorney for Plaintiff/Appellant
210 S. Highlander Way
Howell, Michigan 48843
(517) 546-1850

TABLE OF CONTENTS

STATEMENT IDENTIFYING JUDGMENT AND RELIEF SOUGHT

Under MCR 7.303(B)(1), the People are appealing from a published opinion of the Court of Appeals dated September 15, 2015, in Case No. 325802. The Court of Appeals, in a 2-1 opinion with Judge David H. Sawyer dissenting, affirmed a decision by the Livingston County Circuit Court that affirmed a decision by the 53rd District Court that held that the phrase "police officer" in the resisting and obstructing statute, MCL 750.81d, does not include a reserve police officer.

The relief sought by the People is reversal of the Court of Appeals opinion and the reversal of the district court's order dismissing the resisting and obstructing charge against the defendant with remand to the 53rd District Court with instructions to bind the defendant over for trial if it finds there is sufficient evidence to do so.

INDEX OF AUTHORITIES

CASES

STATUTES

OTHER AUTHORITIES

STATEMENT OF JURISDICTIONAL BASIS

This Court has jurisdiction over this application for leave to appeal pursuant to MCR 7.303(B)(1) and MCR 7.305(C)(2).

STATEMENT OF QUESTION PRESENTED

The resisting and obstructing statute, MCL 750.81d, prohibits a person from resisting a police officer. Defendant was charged with resisting a police officer who was appointed by the chief of police as a reserve officer, was trained, wore a uniform, carried a gun, and was authorized to enforce the law within that city. Because the plain language of the statute does not contain any language narrowing the meaning of the term "police officer" to exclude a subset of police officers that are reserve officers, did the district court err by dismissing a resisting and obstructing charge and holding that a reserve police officer is not protected by the scope of the resisting and obstructing statute?

The People answer:	Yes
Defendant answers:	No
The district court answered:	No
The circuit court answered:	No
The Court of Appeals answered:	No

STATEMENT OF WHY REVIEW IS APPROPRIATE

This Court should exercise its discretion and grant this application. This application presents an important question of statutory interpretation involving the proper scope of the resisting and obstructing statute. In a published opinion, over a strong and compelling dissent, the Court of Appeals majority gave an improperly restrictive construction to the plain language of the statute.

This application presents an issue of significant public interest involving the state as a party, as well as a legal issue of major significance to this state's jurisprudence. The practical effects of this opinion could be enormous.

Police departments across Michigan rely on reserve police officers to supplement their regular complement of full-time police officers. They perform a critical function to preserve and protect public safety. Reserve police officers are trained. They wear a uniform. They carry a gun. They patrol in marked police cars with their full-time partners. They assist in making arrests. Just as a full-time police officer does, they also place their lives at risk. Yet under the published opinion of the Court of Appeals majority in this case, their safety and well-being is not protected by the resisting and obstructing statute, MCL 750.81d. They are nothing more than civilians playing dress-up. They cannot expect any member of the public to comply with their lawful commands or submit to a lawful arrest. In short, they are targets for violence and cannot perform any real functions.

The implications of this ruling are chilling. If a reserve police officer is truly no different from any person on the street, as the district court and the Court of Appeals

majority held, then any effort by a reserve officer could be lawfully met with the use of force in self-defense. And if the reserve officer were forced to threaten deadly force to make an arrest, the person could lawfully use deadly force in self-defense.

The Court of Appeal's elimination of a subset of police officers from the protections of the statute - those who are reserves - is wrong as a matter of statutory construction. If this ruling is left to stand, it will eviscerate any authority of a reserve police officer to act. It will create, and has already created, an atmosphere where local police departments can no longer utilize their services. And because a person being arrested can now choose under this ruling to refuse to obey a police officer who is a reserve, full-time officers working with reserve officers are at a greater risk of harm. Police departments will suffer and the public will as well.

Relief by this Court is appropriate under MCR 7.305(B)(2), (3), and (5).

STATEMENT OF MATERIAL PROCEEDINGS AND FACTS

Defendant was charged with resisting and obstructing a police officer,[1] assault and battery,[2] and being a drunk and disorderly person.[3] A preliminary examination was conducted on June 17, 2014 on the felony resisting charge. Because Officer Douglas Roberts was a reserve police officer, the district court concluded that Officer Roberts was not a "police officer" that fell within the scope of the protections of MCL 750.81d. Accordingly, the district court dismissed that charge. The remaining misdemeanor charges remain pending in the district court.

The facts are relatively uncontested, and are accurately summarized by the district court in its opinion.[4]

Douglas Roberts was working as a reserve police officer for the City of Brighton on the evening of May 4, 2014, assisting a full-time police officer, Officer Parks. Roberts and his partner were assigned a fully marked police car with lights and labeling on the side. He wore a full uniform with a badge, name tag, sleeve marking, and insignia. He also carried a gun.[5]

At 1:52 a.m., Roberts was outside the Stout Irish Pub in the city of Brighton. There was a 911 call regarding a fight in progress at Stout and that the bouncers

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[1]Contrary to MCL 750.81d(1).

[2]Contrary to MCL 750.81.

[3]Contrary to MCL 750.167.

[4]Exhibit B, Opinion and Order at 1-2.

[5]Preliminary Examination Transcript (PE) at 4-6.

required immediate assistance. At the time, it was just Roberts and Parks. They used their overhead lights, and parked behind a party bus facing the front doors of Stout. There was a large group - about 15 people - gathered outside the front door in front of the party bus.[6]

Roberts was riding on the passenger side, and when he opened his door to get out there was a young woman who approached and appeared frantic. According to Roberts, "she said that gentleman that has no shirt on, that's my husband. He's very intoxicated and he's causing all the problems." The woman was directing Roberts' attention to Feeley.[7]

Roberts testified that Feeley, who was shirtless, had his back to Roberts, and "at the point as I started to make approach was throwing his chest into another gentleman. It looked to me like trying to provoke a fight." Roberts estimated that he was about 20 feet away from Feeley. Roberts got within one foot of Feeley "and asked him if he would not - step aside way from the crowd and have a word with me."[8]

Roberts described what Feeley did next: "[H]e spotted the uniform, kind of looked me up and down, and then bolted; he ran." Feeley ran away from Roberts and Roberts followed after him. Roberts recalled: "As I started runnin' after Mr. Feeley I did say police officer, stop. As we got around the corner and he kept running I yelled

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[6]PE at 6-7, 15.

[7]PE at 8.

[8]PE at 9.

to him one more time police officer, stop." The first time Roberts commanded him to stop, he was approximately 10 to 15 feet away from Feeley. Roberts described his tone of voice as "[a]uthoritative and loud."[9] Roberts said his voice "carried over anything. There was no noise at the corner then." The only outside noise was "[m]aybe traffic." The first time Roberts said "police, stop," Feeley gave "[n]o reaction just kept running."[10]

Roberts recalled, "I probably ran about a block ... after the first command. And then when I made the second command to Mr. Feeley, stop, police officer, I did get a reaction out of him."[11] The second time he made that command, which was louder than the first, Feeley started to slow down, and "he turned and squared off to me, looked me ... square in the eye, told me fuck you, and took his right arm and reached behind his back."[12] Roberts described Feeley: "[H]e squared off at me in . . . what I consider an aggressive stance. And then when he uttered the words fuck you and reached behind him, I was in fear for my safety at that point of what he might be reaching for." Feeley had an "aggressive look on his face" and reached with his right hand. Roberts could not see what Feeley was reaching for. Roberts thought "[t]hat he [Feeley] was reachin' for a weapon." Roberts said: "I drew my service weapon and ordered Mr. Feeley to the ground. ... I pointed it at him, told him show me your hands,

[9]PE at 10.

[10]PE at 11.

[11]PE at 11.

[12]PE at 12.

let me see your hands now in a very loud verbal command. That's when his hand did come back out from behind with nothing in it. At that point there I ordered him to the ground."[13]

Feeley complied with Roberts' third command: "At the point that I had him at gunpoint and gave him the order to - to get onto the ground, as he started to comply Officer Gibbard and Officer Dingman (phonetic) arrived on scene. They were actually just down - they seen it all as they were approaching, but that's when they actually got out of the car and were able to assist me at that point. ... Officer Dingman placed handcuffs and doubled locked them on the suspect and Officer Gibbard assisted him."[14]

On cross-examination, Roberts acknowledged that he was not MCOLES certified. Roberts acknowledged that he was not a motor carrier officer, a Capitol security officer of the Department of State Police, affiliated with any junior college or university, affiliated with the Department of Natural Resources' Conservation Officers, affiliated with a Sheriff's Department, a constable, a fire fighter, affiliated with any authorized police agency in the United States, including but not limited to an agent in the Secret Service or Department of Justice.[15] Roberts did, however testify that: "I was sworn in as a officer with the Brighton City Police Department."[16] Roberts told the judge what he had done to become employed by the Brighton Police Department:

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[13]PE at 13.

[14]PE at 14.

[15]PE at 19-20.

[16]PE at 21-22.

- "I went and attended at 16 week police academy that I graduated from. And then was sworn with the City of Brighton to become a duly sworn officer as long as I'm with a full-time officer."[17]
- Roberts took an oath in the Brighton City Hall, and was permitted to do so by the Chief of Police, at whose pleasure Roberts served. Roberts said: "I pledged to serve the people of the City of Brighton through the Brighton City Police Department."[18]
- As part of his oath, Roberts swore to uphold the laws of the City of Brighton, State of Michigan and the Constitution of the United States.[19]
- After he took the oath, Roberts was permitted to work as a police officer; he received a uniform, a patrol car, and the weapon that he drew, all issued from the City of Brighton.[20]
- Roberts said he performs these duties as a police officer for the City of Brighton two or three times a month. Roberts testified: "I fill in for officers that are off, if they've called in sick, if they have vacation time. So I work a full shift. They have 12 hour shifts."[21]

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[17]PE at 23.

[18]PE at 23-24.

[19]PE at 24.

[20]PE at 24.

[21]PE at 24-25.

At the conclusion of the preliminary examination, the People moved to bind over.[22] Defendant objected, claiming that the resisting and obstructing statute did not apply to protect a reserve police officer.[23]

After considering briefs and oral argument, the district court issued an eight page Opinion and Order dated August 29, 2014, and dismissed the resisting and obstructing charge.[24]

The People sought review in the circuit court. By order dated January 13, 2015, the circuit court denied the People's application for leave to appeal for lack of merit in the grounds presented. From that order, the People sought leave to appeal with the Court of Appeals. After granting leave, the Court of Appeals affirmed in a September 15, 2015 published opinion authored by Judge Douglas B. Shapiro and signed by Judge Michael J. Kelly. Judge David H. Sawyer dissented.[25] From that opinion, the People seek review.

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[22]PE at 40.

[23]PE at 40-42.

[24]See Exhibit B.

[25]The opinions are attached as Exhibit A.

ARGUMENT

The resisting and obstructing statute, MCL 750.81d, prohibits a person from resisting a police officer. Defendant was charged with resisting a police officer who was appointed as a reserve officer by the chief of police, was trained, wore a uniform, carried a gun, and was authorized to enforce the law within that city. Because the plain language of the statute does not contain any language narrowing the meaning of the term "police officer" to exclude reserve officers, the district court erred by dismissing a resisting and obstructing charge and holding that a reserve police officer is not protected by the scope of the resisting and obstructing statute.

Standard of Review and Issue Preservation

While a district court decision regarding bindover is generally reviewed for an abuse of discretion, to the extent such a decision is made based on an error of law, errors of law are reviewed *de novo* and necessarily constitutes an abuse of discretion.[26]

Statutory construction is a question of law that is reviewed *de novo*. The principles of statutory construction are well-known and frequently cited. This Court has clearly and repeatedly articulated the standard of review in the area of statutory interpretation:[27]

> We review questions of statutory construction de novo. In doing so, our purpose is to discern and give effect to the Legislature's intent. We begin by examining the plain language of the statute; where that language is unambiguous, we presume that the Legislature intended the meaning clearly expressed--no further judicial construction is required or permitted, and the statute must be enforced as written. We must give the words of a statute their plain and ordinary meaning, and only where the

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[26] *People v Waterstone*, 296 Mich App 121, 131-132; 818 NW2d 432 (2012).

[27] *People v Morey*, 461 Mich 325, 329-330; 603 NW2d 250 (1999)(internal citations omitted).

> statutory language is ambiguous may we look outside the statute to ascertain the Legislature's intent.

This Court went on to explain how the plain meaning of a statute is determined:[28]

> [W]e consider not only the meaning of the phrase itself, but also "its placement and purpose in the statutory scheme."... "The fair and natural import of the terms employed, in view of the subject matter of the law, is what should govern," and as far as possible, effect must be given to every word, phrase, and clause in the statute.

This Court has emphasized: "[t]o ascertain the meaning of a statutory term, this Court construes the term reasonably, according to its plain and ordinary meaning."[29] If the language of the statute is unambiguous, further construction is unnecessary.[30] Because this is a question of law, the decision of the lower courts are not entitled to any deference.

The issue was preserved by the People's motion to bind the defendant over to circuit court for trial.

Discussion

Defendant was charged with Resisting and Obstructing a Police Officer, in violation of MCL 750.81d(1), which provides: "an individual who assaults, batters, wounds, resists, obstructs, opposes, or endangers a person who the individual knows or has reason to know is performing his or her duties is guilty of a felony." "Person"

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[28] *Id.* (internal citations omitted).

[29] *People v Yamat*, 475 Mich 49, 53; 714 NW2d 335 (2006).

[30] *Morey*, 461 Mich at 329-330.

is a defined term:[31]

> "Person" means any of the following:
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> (i) A police officer of this state or of a political subdivision of this state including, but not limited to, a motor carrier officer or capitol security officer of the department of state police.
> (ii) A police officer of a junior college, college, or university who is authorized by the governing board of that junior college, college, or university to enforce state law and the rules and ordinances of that junior college, college, or university.
> (iii) A conservation officer of the department of natural resources or the department of environmental quality.
> (iv) A conservation officer of the United States department of the interior.
> (v) A sheriff or deputy sheriff.
> (vi) A constable.
> (vii) A peace officer of a duly authorized police agency of the United States, including, but not limited to, an agent of the secret service or department of justice.
> (viii) A firefighter.
> (ix) Any emergency medical service personnel described in section 20950 of the public health code, 1978 PA 368, MCL 333.20950.
> (x) An individual engaged in a search and rescue operation as that term is defined in section 50c.

The Plain Language of the Statute

Critically, "police officer" is not further defined. Under the rules of statutory construction,[32] "[a]ll words and phrases shall be construed and understood according to the common and approved usage of the language."[33] Thus, the question presented

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[31]MCL 750.81d(7). The text of the statute is attached as Exhibit C.

[32]MCL 8.3 ("In the construction of the statutes of this state, the rules stated in sections 3a to 3w shall be observed, unless such construction would be inconsistent with the manifest intent of the legislature.")

[33]MCL 8.3a.

here is who is a police officer, according to the common usage of that term.

Resort to a dictionary to understand the common use of words is appropriate.[34] For example, Merriam-Webster defines a police officer as "a person whose job is to enforce laws, investigate crimes, and makes arrests; a member of the police."[35] *Black's Law Dictionary* defines a police officer as "a peace officer responsible for preserving public order, promoting public safety, and preventing and detecting crime."[36] It further defines a "peace" officer as "[a] civil officer (such as a sheriff or police officer) appointed to maintain public tranquility and order; esp. a person designated by public authority to keep the peace and arrest persons guilty or suspected of crime."[37] Under these plain language definitions, a police officer who is a reserve falls within the everyday meaning of the term "police officer."

In this case, the reserve police officer for the city of Brighton falls within the scope of MCL 750.81d(7)(b)(i) as he is "a police officer ... of a political subdivision of this state." But it is extremely significant to note that, while "police officer" is not specifically defined, a broad interpretation was intended. The entire section reads: "A police officer of this state or of a political subdivision of this state *including, but not*

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[34] *Morey*, 461 Mich at 330 ("[W]e may turn to dictionary definitions to aid our goal of construing those terms in accordance with their ordinary and generally accepted meanings.")

[35] Merriam-Webster Online Dictionary, <www.m-w.com>.

[36] *Black's Law Dictionary*, (9th ed, 2009).

[37] *Id.*

limited to, a motor carrier officer or capitol security officer of the department of state police."[38] Thus, even though a police officer generally enforces the law, the resisting and obstructing statute by its very terms includes even those whose duties are more restricted. As the Court of Appeals noted in *People v Thomas*, the language "including, but not limited to," means that the scope is not merely limited to those identified, but to others who are similar - "things of the same kind, class, character, or nature as those specifically enumerated."[39] The definition is expansive, not restrictive.

A *reserve* police officer is simply a smaller subset of the generic class of "police officers." Just as full-time police officers or a part-time police officers are subsets of the broad class of police officers, so are reserve police officers. And a concrete example illustrates the common-sense, every-day broad meaning that people (as opposed to lawyers) give to the phrase "police officer." For example, and by analogy, a person who goes through basic training, takes an oath to defend the United States, wears a uniform and a helmet, carries a rifle, and is shipped overseas to engage in combat might not be considered a "soldier" under the Court of Appeals' view, because that soldier might "merely" be a reserve soldier. But when a reserve soldier is wearing the uniform and the bullets are flying, under the common usage of the term, they're a soldier. And when a reserve police officer is wearing the uniform and the fists are flying, under the common usage of the term, they're still a police officer.

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[38] MCL 750.81d(7)(b)(i)(emphasis added).

[39] *People v Thomas*, 263 Mich App 70, 76; 687 NW2d 598 (2004).

The Court of Appeals Opinion

But the Court of Appeals did not even address the question of the definition of "police officer" and the People's argument that a reserve police officer *is* a police officer. The Court did not analyze or define what a "police officer" is under the statute, but instead just excluded reserves.

The Court of Appeals began its discussion from this flawed premise: "The prosecution contends that *by implication*, reserve police officers fall under subsection 7(b)(i)..."[40] But this completely missed the point that the People submit that reserve police officers *are* police officers *not* by implication, but because they fall within the common-sense everyday meaning of "police officer." Instead, the Court of Appeals continued from its mistaken assumption that a reserve police officer must not be a police officer and concluded that because "the Legislature did not include the term 'reserve police officer' in the definition of persons whose lawful orders must be obeyed" reserve police officers must not be included.[41] As the Court of Appeals explained: "Had the Legislature intended a broad meaning to apply to the term "police officer," there would have been no need for it to specify the statute's application to, *inter alia*, university police officers, sheriff's deputies, and federal conservation officers."[42] But because "police officer" *includes* within its meaning those police officers who are

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[40] *People v Feeley*, ___ Mich App ___; ___ NW2d ___ (2015), *slip op* at 2 (emphasis added).

[41] *Id.*

[42] *Id.*

reserves, nothing further was required of the Court of Appeals but to apply the plain meaning of that term.

In order to exclude those police officers who are reserves from the scope of the statute, the Court of Appeals claimed to be applying the canon of construction that the express mention of one things implies the exclusion of other similar things, otherwise known as *expressio unius est exclusio alterius*. The Court of Appeals concluded that because the statute broadened its coverage to cover not just police officers, but also "including, but not limited to" other categories of persons who have limited law enforcement authority, that reserves must somehow be excluded.[43] But the Court improperly turned an expansive canon into a restrictive one, contrary to what this Court has held. In *In re Forfeiture of $5,264*, this Court held that the phrase "including but not limited to" is *not* one of limitation.[44] To the contrary, this Court held that "the phrase connotes an illustrative listing, one purposefully capable of enlargement."[45]

Commentators support this common-sense view. As Bryan Garner has observed, to say that using the word "*including* ... introduce[s] an exhaustive list [is] a result no competent drafter could have intended."[46] Rather, "[w]hen a definitional section says

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[43] *Id*, *slip op* at 2-3.

[44] *In re Forfeiture of $5,264*, 432 Mich 242, 255; 439 NW2d 246 (1989).

[45] *Id*.

[46] LawProse, "LawProse Lesson #226: "including but not limited to", <www.lawprose.org/lawprose-blog/> (accessed October 26, 2015). Garner further observed: "Of course, if a judge is going to override an interpretative direction so offhandedly, there's no help for it."

that a word 'includes' certain things, that is usually taken to mean that it may include other things as well."[47] As Garner & Justice Scalia have further explained in their treatise, *Reading Law: The Interpretation of Legal Texts*, "the word *include* does not ordinarily introduce an exhaustive list. ... That is the rule both in good English usage and in textualist decision-making."[48] They noted that especially cautious drafters - those that use "including, but not limited to" - do so to avoid and defeat the negative-implication canon, i.e., that the expression of one thing implies the exclusion of others.[49] But the Court of Appeals nevertheless construed that phrase in the completely opposite manner to give an unreasonably constricted definition of "police officer." The construction given by the Court of Appeals majority is wrong and should be reversed.

The District Court Opinion

The Court of Appeals did not rely on the district court's analysis to justify its narrow construction of the statute and properly so. And given the deficiencies in the Court of Appeals' analysis, the district court's reasoning does not provide an alternative basis for affirmance.

To conclude that a reserve police officer is not a police officer within the meaning

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[47]Scalia & Garner, *Reading Law: The Interpretation of Legal Texts* (Thomson/West, 2012), p 226.

[48]*Id.* at 132.

[49]*Id.* at 132-133.

of the resisting and obstructing statute, the district court looked to statutes *other than* the Penal Code to add a restrictive construction to the term "police officer." For example, the district court referred to the Michigan Commission on Law Enforcement Standards (MCOLES). But the definition of "police officer" in the Commission on Law Enforcement Standards Act, is specifically limited to "as used in *this* act."[50] Defendant relies on that narrow definition, but ignores the fact that that definition does not apply beyond that Act. But even if the definition *did* have broader scope, section 9(1) of the Act specifically excluded police reserves from the scope of its rules:[51] "The rules [establishing law enforcement minimum standards] do not apply to a member of ... a police auxiliary temporarily performing his duties under the direction of the ... police department." That a reserve police officer is exempt from these MCOLES requirements yet still considered a peace officer has also been recognized by the Attorney General.[52]

Similarly, the district court relied on the definition of "police officer" contained in the Michigan Vehicle Code, MCL 257.42. Before examining the court's error in relying on this statute, it is critical to note that the district court cited an earlier version of the statute that was later amended by Public Act 529 in 2012 and made effective March 28, 2013. Thus, that section of the Vehicle Code as it presently exists

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[50]MCL 28.602(l)(emphasis added).

[51]MCL 28.609(1).

[52]See OAG, 1983-1984, No 6235, p 335 (July 18, 1984).

provides as follows:

> "Police officer" means any of the following:
>
> (a) A sheriff or sheriff's deputy.
> (b) A village or township marshal.
> (c) An officer of the police department of any city, village, or township.
> (d) An officer of the Michigan state police.
> (e) A peace officer who is trained and certified under the commission on law enforcement standards act, 1965 PA 203, MCL 28.601 to 28.616.
> (f) For purposes of enforcing sections 215, 255, 631(1) other than for speed by noncommercial vehicle operators, 717, 719, 719a, 720, 722, 724, 725, and 726, a duly authorized agent of a county road commission meeting the requirements of section 726c. However, an authorized agent of a county road commission shall only enforce sections 215 and 255 with respect to commercial vehicles. Except as provided in section 726c(2), an authorized agent of a county road commission is not required to be certified as a police officer under the commission on law enforcement standards act, 1965 PA 203, MCL 28.601 to 28.616, to enforce any law described in this subdivision.

The district court focused exclusively on the training and certification requirements contained in subsection (e). But subsection (e) is simply one of six *alternatives* that satisfy the definition of a police officer under the Michigan Vehicle Code. And one of those definitions, subsection (c) is a city police officer. But even the district court's reliance on MCL 257.42 was misplaced. That section is contained in Chapter I of the Vehicle Code entitled "Words and Phrases Defined." And as MCL 257.1 makes clear, the definitions apply to the Michigan Vehicle Code: "The following words and phrases *as defined in this chapter* and as herein enumerated *when used in this act* shall, *for the purpose of this act*, have the meanings respectively ascribed to them in this chapter."[53]

Applying the Vehicle Code definition of "police officers", the district court looked

[53]Emphasis added.

to the Court of Appeal's 1985 decision in *People v Carey*[54] for support. But *Carey* involved a charge under the Vehicle Code for disobeying a conservation officer's order to stop their vehicle under MCL 257.602a. Being a prosecution under the Vehicle Code, the Court of Appeals was required to apply the definition of terms contained within the Vehicle Code, i.e., MCL 257.42.[55] And at the time, because a conservation officer did not fall within the scope of a sheriff's department or city police department, MCL 257.42 required that the conservation officer be a peace officer certified in accordance with the Commission on Law Enforcement Standards Act.[56] Because the defendant in *Carey* was charged with violating the Vehicle Code by disobeying an order from a police officer, the Vehicle Code definition of "police officer" obviously applied. But the district court failed to appreciate the distinction between *Carey*, which required application of the Vehicle Code definition, and this case, which is brought under the Penal Code and employs *its* statutory terms.

In addition, the District Court relied on an opinion from the Court of Appeals in *Michigan State Employees Ass'n v Attorney General*,[57] which held that motor carrier officers were not peace officers. But that case held that certain laws that exempted certain "peace officers" did not exempt motor carrier officers because their authority

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[54]*People v Carey*, 147 Mich App 444; 383 NW2d 81 (1985).

[55]*Id.* at 447-448.

[56]*Id.*

[57]*Michigan State Employees Ass'n v Attorney General*, 197 Mich App 528; 496 NW2d 370 (1992).

to enforce the law was limited by statute only to enforce laws pertaining to commercial vehicles.[58] Accordingly, the Court of Appeals concluded that they were not "peace officers." In this case, however, reserve police officers are not subjected to such statutory limitations. And significantly, the plain language of the resisting and obstructing statute now specifically includes motor carrier officers within the definition of a police officer. Thus, the Legislature did not intend to limit the scope of the protections of the resisting and obstructing statute - they intended to broaden it.

Curiously, the district court also relied on a statute governing the ability of a *sheriff* to appoint special deputies, MCL 51.70, and its requirement that the sheriff appoint a special deputy in writing. But nothing about that statute, or *that* statutory requirement, frankly has *anything* to do with the appointment of a reserve police officer by a city police chief. Why the district court thought a sheriff was required to appoint police officers in a city police department is unexplained and unanswered. Similarly, the district court's reliance on the Court of Appeal's opinion in *People v Van Tubbergan*, regarding whether the sheriff has the authority to appoint special deputies at a religious college under MCL 51.70,[59] is of no significance to this case.

While the district court cited a 2002 Attorney General opinion for the proposition that a reserve officer is not a peace officer, the question answered in that opinion was whether a reserve officer who carries a pistol in a holster is unlawfully brandishing

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[58] *Id.* at 529-531.

[59] The sheriff does. *People v Van Tubbergan*, 249 Mich App 354, 368; 642 NW2d 368 (2002).

that firearm.[60] Thus, any discussion about the defining a peace officer was *dicta*. But ignored was a more applicable earlier Attorney General opinion from 1984 that concluded that "reserve police officers are peace officers as that term is generally understood in Michigan."[61] Although non-binding,[62] this 1984 Attorney General opinion certainly lends force to the idea that a reserve officer serves as a police officer. And, as noted previously, the resisting and obstructing statute applies not only to just police officers, but others carrying out even limited law enforcement duties like motor carrier officers or capitol security officers.

Just because "police officer" is defined in a number of statutes *other* than the Penal Code, does not mean that those definitions are imported into the Penal Code. Guidance can be discerned from the Court of Appeal's 2004 opinion in *People v Thomas*.[63] In *Thomas*, the parties argued that defining the term "serious impairment of a body function" contained in the resisting and obstructing statute could be informed by decisions involving that same phrase in the No-Fault Act.[64] Rejecting that

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[60]OAG 2002, No 7101 (February 6, 2002).

[61]OAG, 1983-1984, No 6235, p 335 (July 18, 1984), citing *People v Bissonette*, 327 Mich 349, 356; 42 NW2d 113 (1950)(defining "peace officers" as those who enforce the general laws).

[62]See *Danse Corp v City of Madison Heights*, 466 Mich 175, 182 n 6; 644 NW2d 721 (2002)(opinions of the Attorney General are not binding on courts).

[63]*People v Thomas*, 263 Mich App 70; 687 NW2d 598 (2004).

[64]*Id*. at 74-75. Resisting and obstructing a police officer that results in a serious impairment of a body function carries a higher penalty. MCL 750.81d(3).

argument, the Court of Appeals held that the No-Fault Act, which provides a system of civil compensation, and the Penal Code, which criminalizes assaultive behavior while resisting arrest, do not relate to the same subject or share a common purpose.[65] A similar observation can be made about the Vehicle Code - or any other statutes relied on by the district court - and the Penal Code. The Vehicle Code is an act that broadly regulates vehicles operated on public highways.[66] The Penal Code, as noted by the *Thomas* court, criminalizes behavior.[67] And specifically, this Court has long-

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[65] *Id.* at 75.

[66] The Vehicle Code, Public Act 300 of 1949 describes its scope: "AN ACT to provide for the registration, titling, sale, transfer, and regulation of certain vehicles operated upon the public highways of this state or any other place open to the general public or generally accessible to motor vehicles and distressed vehicles; to provide for the licensing of dealers; to provide for the examination, licensing, and control of operators and chauffeurs; to provide for the giving of proof of financial responsibility and security by owners and operators of vehicles; to provide for the imposition, levy, and collection of specific taxes on vehicles, and the levy and collection of sales and use taxes, license fees, and permit fees; to provide for the regulation and use of streets and highways; to create certain funds; to provide penalties and sanctions for a violation of this act; to provide for civil liability of manufacturers, the manufacturers of automated technology, upfitters, owners, and operators of vehicles and service of process on residents and nonresidents; to regulate the introduction and use of certain evidence; to provide for the levy of certain assessments; to provide for the enforcement of this act; to provide for the creation of and to prescribe the powers and duties of certain state and local agencies; to impose liability upon the state or local agencies; to provide appropriations for certain purposes; to repeal all other acts or parts of acts inconsistent with this act or contrary to this act; and to repeal certain parts of this act on a specific date."

[67] The Penal Code, Act 328 of 1931 is "AN ACT to revise, consolidate, codify, and add to the statutes relating to crimes; to define crimes and prescribe the penalties and remedies; to provide for restitution under certain circumstances; to provide for the competency of evidence at the trial of persons accused of crime; to provide immunity from prosecution for certain witnesses appearing at criminal trials; to provide for liability for damages; and to repeal certain acts and parts of acts inconsistent with or

recognized that the purpose of the resisting and obstructing statute is to protect police officers from physical harm.[68]

Here, the district court looked to statutes other than the Penal Code for guidance on who constitutes a "police officer" in the resisting and obstructing statute, MCL 750.81d. But this Court, in its recently-released opinion in *People v Mazur*,[69] rejected that mode of analysis. In *Mazur*, this Court analyzed the doctrine of *in pari materia* and how courts should consider definitions in different statutes to construe a specific statute. Analyzing the Michigan Medical Marihuana Act, this Court held in *Mazur* that when a statutory definition is prefaced by limiting language such as "as used in sections ..." such language constitutes a clear expression by the Legislature that the definition contained in those sections should *not* be applied elsewhere.[70] Doing so, the Court held, would "be contrary to legislative intent."[71] Instead, this Court held that "conventional means of statutory construction" should be utilized.[72] And using those conventional means in this case, it is improper to rely on definitions of contained in the Commission on Law Enforcement Standards Act or the Michigan Vehicle Code to

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contravening any of the provisions of this act."

[68]*People v Philabaun*, 461 Mich 255, 262 n 17; 602 NW2d 371 (1999), citing *People v Kretchmer*, 404 Mich 59, 64; 272 NW2d 558 (1978).

[69]*People v Mazur*, 497 Mich 302; ___ NW2d ___ (2015).

[70]*Id.*, *slip op* at 9.

[71]*Id.*, *slip op* at 9-10.

[72]*Id.*, *slip op* at 10.

construe a term in the Penal Code.

Finally, the recent opinion of the Court of Appeals in *Bitterman v Village of Oakley*, deserves an observation.[73] In *Bitterman*, the plaintiff's sought documentation under the Freedom of Information Act regarding the identity of the Village's reserve police officers. The Village cited a FOIA exemption against the release of the names of law enforcement officers. The Court of Appeals recognized that FOIA, like the Penal Code at issue in this case, did not define who was a "law enforcement officer [or] agent" under the exemption. Looking to *Black's Law Dictionary* definition of a "law enforcement officer" as "[a] person whose duty is to enforce the laws and preserve the peace," the Court recognized that a reserve officer certainly appears to qualify as a law enforcement officer under that definition. But because the challenge to the assertion of the law enforcement exemption in *Bitterman* was that persons the Village called "police reservists" really were nothing more than donors who never actually functioned as a police officer, the Court of Appeals remanded to the trial court for a factual determination because there was nothing in the record about their duties.[74] In this case, however, the factual record by the district court is undoubtedly thorough. And unlike in *Bitterman*, there is no doubt in *this* case that the reserve police officer was actually working to enforce the law and preserve the peace when Defendant ignored the reserve officer's command to stop and then "squared up" to physically fight the

[73] *Bitterman v Village of Oakley*, 309 Mich App 53; 868 NW2d 642 (2015).

[74] *Id.* at 72.

reserve officer.

This Court has acknowledged that the Legislature is fully capable of excluding someone from the protections of a statute.[75] Similarly, just because the Legislature defined police officer in one statute does not mean that such a definition applies to another statute. As this Court wrote in *People v Monaco*, "Courts cannot assume that the Legislature inadvertently omitted from one statute the language that it placed in another statute."[76]

Had the Legislature intended to limit the scope of MCL 750.81d to police officers who are certified as police officers by MCOLES, they fully understand how to do that. For example, MCL 257.726c limits certain persons from carrying a firearm "unless he or she is certified as a police officer under the commission on law enforcement standards act, 1965 PA 203, MCL 28.601 to 28.616." Yet nowhere in MCL 750.81d, much less the Penal Code, is that restrictive definition of a police officer embraced. It was inappropriate for the district court to do so and to fail to apply the plain meaning of the term "police officer."

The narrow and constricted definition by the lower courts of "police officer" in

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[75]See, e.g., *People v Williams*, 475 Mich 245, 254-255; 716 NW2d 208 (2006)(legislature could have easily excluded consecutive sentences from the scope of the statutory 180-day contained in MCL 780.131 had they wished to do so). See also *Wesche v Mecosta County Road Commission*, 480 Mich 75, 86; 746 NW2d 847 (2008)("[T]he Legislature knows how to create a statutory threshold when it wishes to."); *Mericka v Dep't of Community Health*, 283 Mich App 29, 38-39; 770 NW2d 24 (2009)("We decline to read ... a limitation into the statute when the Legislature did not include it in the statute itself.").

[76]*People v Monaco*, 474 Mich 48, 58; 710 NW2d 46 (2006).

MCL 750.81d - a term undefined by the statute - has no legal basis and is wrong as a matter of statutory construction. The opinion of the Court of Appeals and district court should be reversed and the case remanded to district court with instructions to bind Defendant over to circuit court as charged.

RELIEF REQUESTED

FOR THE FOREGOING REASONS, the People request that the Court grant this application or grant any other relief as may be appropriate, including peremptory relief reversing the judgment of the Court of Appeals for the reasons contained in the dissenting opinion. Because the issue presented by this application is straightforward, peremptory reversal in the form of an order or per curiam opinion is an appropriate disposition.

Respectfully submitted,

/s/ William J. Vailliencourt, Jr.

William J. Vailliencourt, Jr. (P39115)
Prosecuting Attorney

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